January 6, 2006

624 N. Chester Road
Swarthmore, PA 19081

VIA FAX

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Leahy:

One unusual feature of the debate over the confirmation of Judge Samuel A. Alito, Jr. to the Supreme Court of the United States is that so many Democrats who know him believe that he should be confirmed. As a Democrat who worked for him without becoming a personal friend, perhaps I can explain why.

I joined the New Jersey U.S. Attorney's Office headed by Judge Alito in January 1990, a few months before he became a judge. As a lifelong Democrat and former member of the ACLU, I worried that I would be pushed to take or condone actions that overrode the constitutional rights of criminal defendants. That never happened. The office that Judge Alito ran respected individual rights, and Judge Alito never pushed us to subvert anyone's rights to obtain a conviction.

Judge Alito's membership in the Concerned Alumni of Princeton, which was hostile to women and minorities at Princeton, has raised questions whether he shares those beliefs and would govern according to them. As U.S. Attorney, however, he put women and minorities in supervisory positions. The chief of appeals is the office's most intellectual position, and his was a woman.

In person, Judge Alito was shy and modest, with a self-deprecating sense of humor. He let others take the spotlight. Although he had the authority as U.S. Attorney to use the office to advance the conservative agenda, he never did because he cared more about preserving the independence and character of the office.

As a practicing lawyer currently with Dechert LLP, I have followed Judge Alito's work as a judge, and his opinions show that he is careful to follow the law and respect individual rights. A good example is the case of Franklin Igbonwa, a convicted Nigerian drug dealer facing deportation when his prison term ended. Igbonwa had testified for the government against other Nigerian drug dealers and feared he would be killed if returned to Nigeria. The trial judge

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believed Igbonwa's testimony that the prosecutor had promised to keep him from being deported, and the trial judge ordered the government to honor this promise.

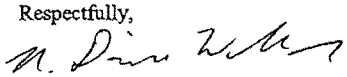
I represented Igbonwa when the government appealed this decision to a Third Circuit panel of three judges, which included Judge Alito. Two judges ruled that the trial judge should not have believed Igbonwa's testimony and reversed the decision stopping his deportation. Any rigid conservative hostile to the rights of minorities and criminal defendants would have joined in a heartbeat a decision to deport a convicted Nigerian drug dealer. Judge Alito, however, dissented. He said that the law required the court to affirm the trial judge's decision to credit Igbonwa's testimony. Unlike the majority, which gave short shrift to Igbonwa's fears, Judge Alito recognized that "the stakes here are high" because "the majority's reversal condemns him to a substantial risk of death resulting directly from his cooperation with the government." Judge Alito concluded that the trial judge should be asked to clarify his findings before the court decided the difficult question whether the prosecutor had the power to stop Igbonwa's deportation.

That case is one example showing Judge Alito's approach to cases –careful, thoughtful, scrupulous in observing the law, respectful of individuals – and why he should be confirmed. He will not be a Robert Bork, whose testimony before this Committee that the Supreme Court would be an "intellectual feast" showed that he lacked the proper temperament for the High Court. Judge Alito has the intellect but not the arrogance of Justice Scalia, who came to the Court determined to remake constitutional law. Judge Alito would be a proper successor to Justice O'Connor because he will decide cases in the same manner she did – with modesty and respect for the individuals involved.

Undoubtedly a Justice Alito would make some decisions I and my fellow Democrats won't like, but approving a Supreme Court Justice should not be like voting for a politician, who receives votes because people like his platform. The Bush administration unintentionally showed with Michael Brown and Harriet Miers that competence in government is more important to the country than politics. My fellow Democrats will not serve the country or their own political interests by rejecting a very qualified nominee whose instinct is to respect rather than remake the law. If measured by competence rather than politics, Judge Alito should be confirmed.

Finally, the press has reported about organized efforts by Judge Alito's former clerks and colleagues to support him publicly. I can assure the Committee that I have not spoken to these groups or to anyone lobbying for Judge Alito's confirmation. I conceived of, wrote, and am submitting this letter entirely on my own.

Respectfully,



R. David Walk, Jr.